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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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Robert Benito Manzanares, et al,  
Plaintiffs,

v.

Attorney General Sean D. Reyes, *Attorney  
General of the State of Utah*, et al  
Defendants.

**REPORT AND RECOMMENDATION  
TO DISMISS CLAIMS AGAINST  
DEFENDANT SEAN REYES**

Case No. 2:14-cv-00040-DN-EJF

District Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

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On January 22, 2014, Plaintiffs filed a Complaint challenging the constitutionality of the Utah Adoption Act. (Compl. ¶ 41, [ECF No. 2](#).) On October 2, 2014, Plaintiffs amended their Complaint to add Sean D. Reyes as a Defendant for the first time. (Am. Compl. ¶ 48, [ECF No. 35](#).) Filing an amended complaint restarts the 120-day service period provided in Federal Rule of Civil Procedure (“Rule”) 4(m)<sup>1</sup> “as to those defendants newly added in the amended complaint.” *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1148 (10th Cir. 2006) (citing *Carmona v. Ross*, 376 F.3d 829, 830 (8th Cir. 2004)). Thus, Plaintiffs had until January 30, 2015, to serve Attorney General Reyes. [Fed. R. Civ. P. 4\(m\)](#).

As of January 30, 2015, Plaintiffs had not filed any proof of service indicating they had served Attorney General Reyes. In the year since, Plaintiffs have not requested an extension of

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<sup>1</sup> The amended Rule 4(m) became effective on December 1, 2015, and reduces the time for serving a defendant from 120 days to 90 days. This amendment does not apply in analyzing the Plaintiffs’ failure to effect service, however, because it became effective only after the original 120 days for service had passed. See *Swan v. Fauvel*, No. 15-cv-00103-WJM-NYW, 2015 WL 7755493, at \*7 n.4 (D. Colo. Dec. 2, 2015) (noting because Rule 4(m) amendment did not become effective until after plaintiff filed his complaint and 120 days had passed, it did not apply to the analysis of the plaintiff’s failure to serve).

time to serve Attorney General Reyes or filed a proof of service. Rule 4(m) states that the Court “must dismiss the action without prejudice against the defendant or order that service be made within a specified time” sua sponte if the plaintiff fails to serve the defendant within the required time. *Id.* This Report and Recommendation will give Plaintiffs notice prior to dismissal as required by Rule 4(m). Therefore, the undersigned RECOMMENDS the Court dismiss all claims against Attorney General Reyes without prejudice for failure to effect service.

This Court will send copies of this Report and Recommendation to the parties, who the Court hereby notifies of their right to object to the same. The Court further notifies the parties that they must file any objection to this Report and Recommendation with the clerk of the district court, pursuant to [28 U.S.C. § 636\(b\)](#) and [Fed. R. Civ. P. 72\(b\)](#), within fourteen (14) days of service thereof. Failure to file objections may constitute waiver of objections upon subsequent review.

DATED this 2nd day of February, 2016.

BY THE COURT:

  
EVELYN J. FURSE  
United States Magistrate Judge